

our sound, our community, our chance

Status of PSP Engagement in Floodplain Policy Issues Written Update

Prepared by:David St. John	
Proposed Action:	Written Update

Summary: The two main areas of policy activity, and their current status, are:

1) The Federal Emergency Management Agency's (FEMA) work to respond to National Marine Fisheries Service's (NMFS) Biological Opinion (BiOp) on the National Flood Insurance Program (NFIP)

FEMA has requested, and NMFS has granted, an extension of the timeline for the alignment of the floodplain management programs of the 122 NFIP communities in Puget Sound with the standards in the BiOp. All NFIP communities now have until September 22, 2011 to achieve this alignment. FEMA, NMFS and the Partnership are developing a proposal for the work plan that will guide work over the next year to support communities in meeting this deadline. FEMA and NMFS are nearing completion of the revisions to the Model Ordinance. the essential element of the first option for communities to use in aligning their programs.

2) The US Army Corps of Engineers' proposed revisions to the standards for managing vegetation on levees.

Governor Gregoire, the Partnership, and several local jurisdictions have sent letters to the Corps in DC supporting a regional approach to creating the standards that will be applied in Puget Sound. These letters build on the Partnership's joint regional comment letter, signed by 23 parties, sent in March 2010 in opposition to the Corps' initial proposal, as well as a letter from Washington's congressional delegation encouraging swift resolution of the issue. They also advocate for the "regional framework" approach recommended by regional leaders from the Corps, NMFS, and USFWS. The Corps announced on October 18, 2010 that they are postponing their decision on the standards until the end of 2010 (instead of the end of October). The Seattle District of the Corps has held an initial staff-level meeting focused on initiating the steps for developing the standards that will be applied in the Puget Sound region. Partnership leadership and staff are working with key agencies and doing strategic outreach in support of the creation of regionally appropriate, scientifically defensible standards for Puget Sound.

Background: These two main issues were raised at the July 2010 ECB meeting, during the briefing on the Floodplain Issues and Recommendations report. The ECB has not made any specific recommendations in regard to these issues. These issues were raised similarly at the July 2010 Leadership Council meeting, with the LC recommending communication with the federal agencies in support of the regional framework proposal for levee vegetation standards. The Science Panel has not been briefed on these issues.

Next Steps:

In re: the FEMA BiOp:

- 1. Work with FEMA, NMFS, and Ecology to identify and prioritize critical issues for meeting the September 2011 deadline and develop a DRAFT work plan to resolve them
- 2. Work with issue leaders to provide ongoing support and guidance for work plan implementation

In re: the Corps' levee vegetation standards:

- 1. Monitor the national level decision making process for the standards and ensure that it preserves meaningful flexibility for regional-scale work in Puget Sound
- 2. Continue with outreach at all levels of government in support of the regional framework approach
- 3. Participate in and support timely, effective outcomes from the Corps' Seattle District process

Attachments:

- March 2010 joint regional comment letter
- June 2010 letter from the WA congressional delegation
- August 2010 letter from the regional leaders of the Corps, USFWS and NMFS

United States Army Corps of Engineers Attn: CECW-CE, Douglas J. Wade 441 G Street NW Washington, DC 20314-1000

Re: Opposition to Proposed Revised Policy Regarding Variances from Vegetation Standards for Levees and Floodwalls (Docket No. COE-2010-0007)

Dear Mr. Wade:

Thank you for the opportunity to provide comments in regard to the February 9, 2010 proposal by the Army Corps of Engineers (Corps) to revise its policy regarding variance from the national standard for managing vegetation on levees that are part of the Public Law (PL) 84-99 program. The signers of this letter represent a broad spectrum of authorities, responsibilities and interests associated with the management of floodplains, and have an ongoing need to find sustainable and sound policy approaches to achieving social and ecological goals related to how floodplains are managed.

We respectfully express our dissatisfaction with the Corps' proposed revisions. Fundamentally, it is difficult for us to see how this proposal will help the region reach the goal we share with the Corps of protecting and restoring Puget Sound by 2020, or effectively provide lasting certainty for local implementers in Puget Sound and across Washington state who have come to rely on significant levels of PL 84-99 funding in their levee management programs. It will not improve our ability to meet our shared desire to align flood safety and environmental rules in a way that works for our community. It will hinder our ability to protect clean water and recover salmon.

While the revisions leave open the option for departures from the highly restrictive national standard, the variance option proposed would establish an application process so onerous that it would rarely, if ever, be used. We believe that one end result of the implementation of the proposed revisions will be a permanent reduction in the amount and quality of vegetation on the hundreds of miles of levees within the program. Even under the current variance we are aware of the removal of hundreds of trees in one jurisdiction in 2009, and the likelihood that thousands more will be lost. The proposed revision would only exacerbate this existing problem. A corollary end result will be the continued, unresolved question of the exposure of program participants to legal issues stemming from the impacts of degraded riparian conditions on listed salmon populations. The proposal contributes little to advancing an effective solution to this existing problem.

Our disappointment is particularly acute in light of the February 2009 workshop on levee management, at which the Corps expressed a sincere interest in exploring different approaches to this issue. We were encouraged by that discussion, and by the resulting effort the Corps, working with the National Marine Fisheries Service, put into scoping a local pilot study that would use rigorous methods to test assumptions about the interactions between vegetation and levees and then drive development of locally-appropriate management standards. We appreciate the work the Corps put into developing the pilot concept and its willingness to look at options for resolving the complex issues at hand.

This proposal goes in the opposite direction from where that 2009 discussion seemed to point, and apparently as a result of the failure of the pilot concept, does not specifically address conditions and opportunities in Puget Sound or across Washington state. It fails to maintain the status quo policy that offered marginal but useful flexibility, let alone represent a more tailored and locally responsive management approach.

We request that the Corps withdraw and recraft this proposal. We strongly recommend that the standards that emerge from this rule-making process

- adhere to the current best available science regarding the interaction between vegetation and levees, including information that would be gained through a timely regional pilot project that would investigate this interaction and utilize the information in the near term;
- continue and increase flexibility for PL 84-99 program participants to retain vegetation of any size on levees where there is no evidence that such vegetation compromises public safety; and
- support program participants' need to resolve existing legal concerns stemming from the conflict between the existing standards and the recovery of listed species.

Please note that several signers of this letter will be providing more detailed comments on the proposal under separate cover.

We understand that in making policy decisions like this one the Corps must account for its nationwide operating context. We encourage, and are willing to work closely with, the Corps to develop policy options that reflect local conditions and opportunities and align better with our shared goals while meeting the intent of the nationwide interests of the Corps.

Sincerely,

Richard Jones, Commissioner

Columbia County, WA

United States Army Corps of Engineers Docket No. COE-2010-0007 Page 3 | of 4

Craig George, Mayor City of Dayton, WA

Scott Chitwood, Natural Resources Director Jamestown S'Klallam Tribe

David D. Dicks, Executive Director Puget Sound Partnership

Ted Sturdevant, Director Department of Ecology

Philip Anderson, Director
Washington Department of Fish & Wildlife

Merle Jefferson, Senior, Executive Director Lummi Natural Resources Department

Pat McCarthy, County Executive Peirce County, WA

Kathy Fletcher, Executive Director People for Puget Sound

Dan Siemann, Senior Environmental Policy National Wildlife Federation, Pacific Region Lorraine Loomis, Fisheries Manager Swinomish Indian Tribal Community

Bill Anderson, Executive Director Citizens for a Healthy Bay

Joan McBride, Mayor City of Kirkland, WA

Shawn Contrell

Shawn Cantrell, Executive Director Seattle Audubon Society

Jim Haggerton, Mayor City of Tukwila, WA

Michael Garrity, Washington Conservation Director American Rivers

Tim Trohimovich
Co-Director of Planning & Law
Futurewise

Mul D. A

United States Army Corps of Engineers Docket No. COE-2010-0007 Page 4 | of 4

Ray Hoffman, Acting Director Seattle Public Utilities

Bill Abrahamse, Council President Washington Trout Unlimited

John Marchione, Mayor City of Redmond, WA Barry A. Thom, Acting Regional Director NOAA Fisheries Northwest Region

Puget Sound Partnership, Ecosystem Coordinating Board

Denis Law, Mayor City of Renton, WA

Joan Crooks, Executive Director Washington Environmental Council

Congress of the United States Washington, DC 20515

June 7, 2010

The Honorable Jo-Ellen Darcy Assistant Secretary for Civil Works, Army U.S. Army Corps of Engineers

Dear Ms. Darcy:

We write to request that the Army Corps of Engineers (Corps) expeditiously convene a roundtable meeting with our constituents regarding the policies and regulations concerning levee standards and certifications, and the conflicts those policies may encounter regarding other federal mandates and policies.

We appreciate your attendance at the Green River Valley stakeholders meeting on May 6th, as well as your commitment to convene a roundtable to discuss these important issues. As you heard from our constituents, existing and proposed policies and regulations have resulted in conflict between federal law and agency guidelines, which has caused a great deal of confusion for levee operators across Washington State.

You may be aware that at least three modern levees in the Green River Valley are currently not certified or are in danger of losing certification because of a lack of coordination between the Federal agencies involved in constructing and accrediting these levees. As an example, the Riverbend levee on the Green River was completed in 2008 to Corps standards, with vegetation, and has yet to be accredited by the Federal Emergency Management Agency (FEMA) because of confusion over an impending Corps policy change that will disallow vegetation on levees and end a variance the Seattle District has used to allow levee vegetation. Unfortunately, we are seeing similar situations occurring throughout Washington State.

FEMA, who must accredit a certified levy before it will modify its flood maps, has based its certification standards on Corps levee construction standards, which will soon include the proposed change to vegetation standards. These changing standards may result in levees being decertified and subsequently being shown as not providing any mitigation on FEMA's flood maps, resulting in increased insurance premiums for an entire community.

Additionally, as you know, several populations of salmon in Washington State are listed species under the Endangered Species Act (ESA). As a result of this listing, levee operators in the impacted Washington river basins must comply with the ESA, which in most cases means vegetation that provides shade to cool the water temperature must be planted on a levee. Levees required to be in compliance with the ESA could simultaneously be in conflict with proposed Corps vegetation standards if no variance is kept in place. This could also result in levees being decertified or not being accredited if the FEMA standards are not met.

It is critical that a roundtable occur without delay to address the conflicting standards and regulations in order to ensure that the levee operators can perform appropriate levee maintenance. Municipalities in several river basins across Washington State, including the Green River Valley, are caught in the middle of conflicting guidance from the many Federal agencies that have policies regarding levee regulation. This confusion may leave communities exposed to legal action or unnecessarily vulnerable to flooding. Without collaboration between all stakeholders involved, including all relevant Federal agencies, communities in Washington State will continue to face difficulties getting levees certified and accredited.

When the Corps committed to convening this roundtable during the May 6th meeting, Corps staff recommended that an initial meeting take place no later than July. We understand that in the past, similar roundtable processes have taken up to 18 months to find a comprehensive solution to conflicting levee policies.

In light of the communities in our state needing to certify their levees to ensure accurate FEMA mapping, currently being told they need to remove vegetation now to retain the certification of their levees, and the impending September date of effectiveness for the new Corps vegetation policy, we respectfully request that you initiate a roundtable process as soon as possible.

We look forward to hearing back from you on your proposed timeline to begin the roundtable process, and to working with you in the future to ensure the health and safety of our local levee systems.

Sincerely,

Mil Zom Mc Dennath

Jy Inhe

cc: The Honorable Craig Fugate, Administrator Federal Emergency Management

cc: The Honorable Jane Lubchenco, Administrator, National Oceanic and Atmospheric Administration

cc: The Honorable Rowan W. Gould, Acting Director, U.S. Fish and Wildlife Service







TO:

AUG 0 5 2010

U.S. Army Corps of Engineers, Chief of Engineers, LTG Robert Van Antwerp, 441 G Street NW, Washington, DC 20314-1000

U.S. Department of the Interior, U.S. Fish and Wildlife Service, Acting Director, Mr. Rowan Gould, 1849 C Street NW, Washington, DC 20240-0001

National Oceanic and Atmospheric Administration, Administrator, Dr. Jane Lubchenco, 1401 Constitution Avenue, NW, Room 5128, Washington, DC 20230

- 1. The federal executives in the Northwestern United States have enjoyed a long-standing record of collaboration and problem solving through a range of significant environmental challenges over the last several decades, and we remain fully committed to this collaborative problem solving. With this in mind, we write this letter to share our regional perspective on existing and proposed policy and regulations related to vegetation on levees that may be in conflict with federal law and agency guidelines, leading to understandable confusion and consternation on the part of levee owners, and likely to generate substantial objections by Members of Congress and their constituents.
- 2. The proposed USACE Policy Guidance Letter (PGL)—"Variance from Vegetation Standards for Levees and Floodwalls", as published in the Federal Register for public comment (February 9, 2010), proposes to place legitimate concerns about levee integrity due to vegetation at odds with current Endangered Species Act law and well-established consultation protocols. Additionally, it is generally deficient on a number of salient points (outlined below) and specifies an effective date of September 30, 2010 which we respectfully suggest is untenable given the current state of vegetation on levees in our region and how dependent certain species of fish are on the shade and water-cooling and other life-cycle habitat features such vegetation provides.
- 3. We observe the following deficiencies in the proposed PGL.
- a. There is an inconsistency in the definition of a "levee system" (Paragraph 5) and the requirement for individual sponsors to initiate an application for a variance. In most cases, a levee system will incorporate multiple individual sponsors with varying jurisdictions covering only a portion of the levee system. This renders the variance procedure awkward and more difficult than necessary for the sponsors.
- b. The proposed PGL appropriately ascribes a variance request for the purposes to: "preserve, protect and enhance natural resources and/or protect the rights of Native Americans..." However, it does not give due consideration to instances where sound science

and ongoing research indicates that specific vegetation types may provide benefits (e.g., erosion control) or not have consequential negative impacts (e.g., small, shallow root systems) to levee integrity and public safety. Furthermore, without consideration of science and ongoing research, the proposed PGL misses the opportunity to leverage new knowledge to facilitate win-win solutions that accommodate both levee integrity concerns and endangered species habitat. Finally, a "do no harm" approach may be warranted in many instances wherein individual sponsors may not have the means to "deal with the root system after cutting down the tree", a dangerous and likely outcome of the current policy that emphasizes tree removal as one way to maintain compliance with Corps' vegetation standards for levees.

- c. The process outlined in the proposed PGL seems overly cumbersome, leading all the way to Washington DC for final approval by the Corps' Levee Safety Officer who has no responsibility for operating the levee system in conjunction with local authorities. We believe this approach misses a huge opportunity to leverage the very successful and productive regional decision-making model operating in the Northwest for several decades. Thus we believe the PGL should be revised to accommodate these collaborative approaches that will achieve the applicable public safety and environmental objectives of the program.
- d. We would encourage a close interdepartmental coordination effort at the Washington DC level where opportunities to align the various agency policies and processes with the law are the greatest. Clearly, the concurrent goals of public safety (levee integrity) and ESA compliance are achievable but only when the various agencies coordinate such policy/law conflicts in advance of public release and implementation.
- 4. We propose for your immediate consideration and decision on the following:
 - a. Give us until December 2011 to:
- (1) Develop a regional framework based on common ground around which to devise implementable local solutions.
- (2) Apply the regional framework in close coordination and collaboration with local individual sponsors who ultimately must implement and resource these solutions.
- (3) Allow the emerging science and ongoing research (initial Corps report due out in September 2010) to inform possible revision of the proposed PGL.
- (4) Work with local constituencies and Members of Congress in a strategic communications campaign to inform the public and levee sponsors on the way ahead outlined in the regional framework.
- (5) Provide individual sponsors with existing variances (including the Seattle District Regional Variance) and new applicants with the time to apply through a revised variance application process to gain approval for their plans to move forward toward achieving the Corps

vegetation standard while the individual sponsors marshal public support and revenue to get into compliance. This may necessarily involve small steps (e.g. removal of some tree branches and/or selected vegetation for inspection visibility and/or flood fighting purposes while doing no harm).

- b. Initiate coordination of proposed PGL for variance policy and/or vegetation standard among the agency headquarters to reconcile the conflict between existing law and policy. This could lead to some accommodation, including recognition of the value of science and ongoing research to inform such policy as it evolves, and allow more time for coordination and implementation to ensure our proposed regional framework is incorporated.
- c. Reconcile the disconnect in the variance application process between the definition of levee system and the individual sponsors who invariably have ownership of only a portion of the system.
- 5. We respectfully recognize that these points may not be all inclusive, and we welcome the opportunity to review these recommendations in the context of other comments that may have been received through the review process. We believe wholeheartedly that we possess the ability to deliver on what we propose above with the allocation of time and continued vertical collaboration and alignment. We look forward to further discussion with you as we continue to tackle these urgent and compelling challenges together. Thank you for your continued support and consideration on this matter.

Very Respectfully,

Regional Administrator - Northwest Region NOAA - National Marine Fisheries Service

Robyn Thorson

AUG 0 3 2010

Regional Director - Pacific Region U.S. Fish and Wildlife Service

John R. McMahon

JUL 3 0 2010

Brigadier General, US Army

Division Commander

Enclosure: Summary from 1 July 2010 meeting included as background information.

The Regional Administrators of the National Marine Fisheries Service (NOAA Fisheries) and the U.S. Fish and Wildlife Service (USFWS), Mr. William Stelle and Ms. Robyn Thorson respectively, met with Brigadier General John R. McMahon, Commander, Northwestern Division, USACE, on July 1, 2010 to discuss interagency cooperation to address regional concerns expressed by communities who rely on levees for flood risk reduction in Washington, Oregon, Idaho, Western Montana, and Wyoming. BG McMahon requested the meeting to begin dialogue with Mr. Stelle, Ms. Thorson, and their staffs on challenges raised by the Corps' renewed emphasis on levee vegetation maintenance and potential conflicts the Corps' policy poses to critical habitat for fish under the Endangered Species Act.

The meeting's purpose was to share the Corps' ongoing levee vegetation related activities and to achieve a common understanding of the issues related to levees including: public safety, levee vegetation maintenance, and the Corps' Rehabilitation and Inspection Program as it relates to levee certification under the Federal Emergency Management Administration's National Flood Insurance Program. The meeting's goal was to begin collaborative efforts to identify a path forward that balances each agency's congressional mandate or mission while allowing for levee vegetation maintenance.

Accordingly, the agencies agreed to work together to develop a regional framework via a roundtable process. The process as proposed follows, allowing for changes in course if and when appropriate:

- Assemble a small technical team comprised of subject matter experts representing the three agencies with the task of developing a "draft" regional framework that meets the agencies' policies and mandates. This step will include review and endorsement from the three agencies.
- Provide the "draft" framework to tribal government and state and local agencies for review and comment. The purpose of this step is to obtain their input to ensure a workable plan for state, local, and tribal resource agencies.
- Obtain the input of non-federal levee sponsors who are responsible for levee operation
 and maintenance and other related activities such as obtaining permits as required and
 requests for vegetation variances when and where appropriate. This is proposed to occur
 in several facilitated workshops, possibly by river basin. The intent of this effort would
 be to review the "draft" framework with them, and make final refinements based on local
 input.
- Final framework will be made available to all stakeholders and interested parties. It will
 be considered the roadmap for subsequent levee operation and maintenance activities in
 the Northwestern Region.

This proposed round table process and framework development will take time. The three agencies propose approximately 15 months to develop and implement the finalized framework. Further, it is also recognized that once the framework is in place, a transition period will be needed for levee sponsors responsible for levee maintenance on tributaries with ESA-listed fish to either submit a request for a vegetation variance or to meet the national levee vegetation standard. Consequently, after the framework is adopted, a two-year transition period (until September 30, 2013) is envisioned.

The vegetation variance policy is particularly important in the Northwest as it provides an important opportunity to allow vegetation on or adjacent to the riverward levee slope in areas where riparian habitat is critical for ESA-listed fish survival. The two-year transition period is requested to allow non-Federal sponsors to fully comply, or to develop their plan for financing and performing system-wide improvements, as allowed under the Memorandum: Temporary Extension of PL 84-99 Eligibility, dated January 9, 2009.